

§ 23.27

(2) Negotiation with a potential concessionaire to include ACDBE participation, through direct ownership arrangements or measures, in the operation of the concession.

(3) With the prior approval of FAA, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.

(f) Your ACDBE program must require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with DBEs.

(g) As provided in §23.61 of this part, you must not use set-asides and quotas as means of obtaining ACDBE participation.

§ 23.27 What information does a recipient have to retain and report about implementation of its ACDBE program?

(a) As a recipient, you must retain sufficient basic information about your program implementation, your certification of ACDBEs, and the award and performance of agreements and contracts to enable the FAA to determine your compliance with this part. You must retain this data for a minimum of three years following the end of the concession agreement or other covered contract.

(b) Beginning March 1, 2006, you must submit an annual report on ACDBE participation using the form found in appendix A to this part. You must submit the report to the appropriate FAA Regional Civil Rights Office.

§ 23.29 What monitoring and compliance procedures must recipients follow?

As a recipient, you must implement appropriate mechanisms to ensure compliance with the requirements of this part by all participants in the program. You must include in your concession program the specific provisions to be inserted into concession agreements and management contracts, the enforcement mechanisms, and other means you use to ensure compliance. These provisions must include a monitoring and enforcement mechanism to verify that the work committed to

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ACDBEs is actually performed by the ACDBEs. Your program must describe in detail the level of effort and resources devoted to monitoring and enforcement.

Subpart C—Certification and Eligibility of ACDBEs

§ 23.31 What certification standards and procedures do recipients use to certify ACDBEs?

(a) As a recipient, you must use, except as provided in this subpart, the procedures and standards of part 26, §§26.61–91 for certification of ACDBEs to participate in your concessions program. Your ACDBE program must incorporate the use of these standards and procedures and must provide that certification decisions for ACDBEs will be made by the Unified Certification Program (UCP) in your state (see part 26, §26.81).

(b) The UCP's directory of eligible DBEs must specify whether a firm is certified as a DBE for purposes of part 26, an ACDBE for purposes of part 23, or both.

(c) As an airport or UCP, you must review the eligibility of currently certified ACDBE firms to make sure that they meet the eligibility standards of this part.

(1) You must complete these reviews as soon as possible, but in no case later than April 21, 2006 or three years from the anniversary date of each firm's most recent certification, whichever is later.

(2) You must direct all currently certified ACDBEs to submit to you by April 21, 2006, a personal net worth statement, a certification of disadvantage, and an affidavit of no change.

§ 23.33 What size standards do recipients use to determine the eligibility of ACDBEs?

(a) As a recipient, you must, except as provided in paragraph (b) of this section, treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years, do not exceed \$52.47 million.

(b) The following types of businesses have size standards that differ from the

standard set forth in paragraph (a) of this section:

(1) Banks and financial institutions: \$1 billion in assets;

(2) Car rental companies: \$69.97 million average annual gross receipts over the firm's three previous fiscal years, as adjusted by the Department for inflation every two years from April 3, 2009.

(3) Pay telephones: 1,500 employees;

(4) Automobile dealers: 350 employees.

(c) The Department adjusts the numbers in paragraphs (a) and (b)(2) of this section using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment. The Department publishes a FEDERAL REGISTER document informing the public of each adjustment.

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§ 23.35 What is the personal net worth standard for disadvantaged owners of ACDBEs?

The personal net worth standard used in determining eligibility for purposes of this part is \$750,000. Any individual who has a personal net worth exceeding this amount is not a socially and economically disadvantaged individual for purposes of this part, even if the individual is a member of a group otherwise presumed to be disadvantaged.

§ 23.37 Are firms certified under 49 CFR part 26 eligible to participate as ACDBEs?

(a) You must presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. By meeting the size, disadvantage (including personal net worth), ownership and control standards of part 26, the firm will have also met the eligibility standards for part 23.

(b) However, before certifying such a firm, you must ensure that the disadvantaged owners of a DBE certified under part 26 are able to control the firm with respect to its activity in the concessions program. In addition, you are not required to certify a part 26 DBE as a part 23 ACDBE if the firm does not do work relevant to the airport's concessions program.

§ 23.39 What other certification requirements apply in the case of ACDBEs?

(a) The provisions of part 26, §§ 26.83 (c)(2) through (c)(6) do not apply to certifications for purposes of this part. Instead, in determining whether a firm is an eligible ACDBE, you must take the following steps:

(1) Obtain the resumes or work histories of the principal owners of the firm and personally interview these individuals;

(2) Analyze the ownership of stock of the firm, if it is a corporation;

(3) Analyze the bonding and financial capacity of the firm;

(4) Determine the work history of the firm, including any concession contracts or other contracts it may have received;

(5) Obtain or compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive;

(6) Obtain a statement from the firm of the type(s) of concession(s) it prefers to operate or the type(s) of other contract(s) it prefers to perform.

(b) In reviewing the affidavit required by part 26, § 26.83(j), you must ensure that the ACDBE firm meets the applicable size standard in § 23.33.

(c) For purposes of this part, the term prime contractor in part 26, § 26.87(i) includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient.

(d) With respect to firms owned by Alaska Native Corporations (ANCs), the provisions of part 26, § 26.73(i) do not apply under this part. The eligibility of ANC-owned firms for purposes of this part is governed by § 26.73(h).

(e) When you remove a concessionaire's eligibility after the concessionaire has entered a concession agreement, because the firm exceeded the small business size standard or because an owner has exceeded the personal net worth standard, and the firm in all other respects remains an eligible DBE, you may continue to count the concessionaire's participation toward DBE goals during the remainder